

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

International Decision Systems, Inc.,

Civil No. 08-4961 (DWF/JJK)

Plaintiff,

v.

**MEMORANDUM  
OPINION AND ORDER**

Continental First Federal, Inc.,

Defendant.

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Kelly W. Hoversten, Gray Plant Mooty Mooty & Bennett PA, counsel for Plaintiff.

No appearance for Defendant.

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The above-entitled matter comes before the Court upon Plaintiff's Motion for Summary Judgment (Doc. No. 34). For the reasons stated below, the Court grants that motion.

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff International Decision Systems, Inc., filed this action in August 2008 alleging that Defendant Continental First Federal, Inc., failed to pay for computer software and related services Plaintiff provided to Defendant. (Doc. No. 1.) Defendant's Answer included counterclaims alleging breach of contract and of various warranties, as well as misrepresentation, negligence, unjust enrichment and promissory estoppel. (Doc. No. 3.)

In May 2009, after certain pre-trial proceedings, Defendant's counsel moved to withdraw. (Doc. No. 19.) Defendant's local counsel promptly joined that motion. (Doc. No. 25.) On June 29, 2009, the Court granted those motions, and urged Defendant to obtain new counsel by July 13, 2009. (Doc. No. 33.) The Court further noted that "[f]ailure to do so may result in dismissal of this action" in light of the fact that Defendant, as a corporation, may not represent itself *pro se* in this district. (*Id.*)

On July 16, 2009, Plaintiff filed the present motion for summary judgment seeking a total of \$247,083.10 in damages and associated costs, and dismissal of Defendant's counterclaims. (Doc. Nos. 34, 36.)<sup>1</sup> Defendant has filed no opposition to Plaintiff's motion for summary judgment and failed to appear at the hearing scheduled on that motion.

## DISCUSSION

A party is entitled to summary judgment "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Where the movant presents a properly-supported motion, "an opposing party may not rely merely on allegations or denials in its own pleading; rather its response must . . . set out specific facts showing a genuine issue for trial." *Id.* 56(e)(2). "If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party." *Id.*

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<sup>1</sup> Plaintiff seeks damages of \$186,229.14 for unpaid services, and \$51,320.96 in late payment charges, plus costs, expenses and fees of \$9,533.00. (Doc. No. 36 at 2-4.)

Here, Plaintiff has filed a properly-supported motion for summary judgment showing that there are no genuine issues of fact and that it is entitled to judgment as a matter of law.<sup>2</sup> On this record, Defendant's failure to offer any response renders judgment appropriate.

### **CONCLUSION**

Plaintiff is entitled to a judgment in the amount of \$247,083.10. Defendant's counterclaims are dismissed with prejudice.

Based on the foregoing, and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff's motion for summary judgment (Doc. No. 34) is **GRANTED**;
2. Defendant's counterclaims are **DISMISSED WITH PREJUDICE**; and
3. Judgment shall be entered in favor of International Decision Systems, Inc., and against Continental First Federal, Inc., in the amount of \$247,083.10.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: October 16, 2009

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge

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<sup>2</sup> Plaintiff served requests for admission regarding key facts of the contractual relationship, Defendant's breach of that contract, and the resulting damages. By failing to respond, Defendant has admitted those facts. Fed. R. Civ. P. 36(a)(3).